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*Counsel for Defendant-Intervenor*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THE STATE OF CALIFORNIA; THE STATE OF  
DELAWARE; THE STATE OF MARYLAND;  
THE STATE OF NEW YORK; THE  
COMMONWEALTH OF VIRGINIA,

*Plaintiffs,*

v.

ERIC D. HARGAN, in his official capacity as  
Acting Secretary of the U.S. Department of Health  
and Human Services; U.S. DEPARTMENT OF  
HEALTH AND HUMAN SERVICES; R.  
ALEXANDER ACOSTA, in his official capacity  
as Secretary of U.S. Department of Labor; U.S.  
DEPARTMENT OF LABOR; STEVEN  
MNUCHIN, in his official capacity as Secretary of  
the U.S. Department of the Treasury; U.S.  
DEPARTMENT OF THE TREASURY; DOES 1-  
100,

*Defendants,*

and,

THE LITTLE SISTERS OF THE POOR, JEANNE  
JUGAN RESIDENCE,

*Defendant-Intervenor.*

Case No. 4:17-cv-05783-HSG

**DEFENDANT-INTERVENOR'S  
OPPOSITION TO PLAINTIFFS'  
MOTION TO LIFT STAY**

1 The Little Sisters of the Poor, Jeanne Jugan Residence (“Little Sisters”) does not object to lifting  
2 the stay for the limited purpose of having a status conference with the Court to determine how to  
3 proceed in this matter going forward. Beyond that limited purpose, the Little Sisters oppose lifting of  
4 the stay because the central matters in this case are currently before the Ninth Circuit, where they  
5 have been fully briefed and argued. By its terms, the stay was designed to continue “pending  
6 resolution of Defendants’ appeals.” Because those appeals have not yet been resolved, lifting the  
7 stay is premature.

8 Much of the States’ motion is premised on their repeated claim that the existing appeal will  
9 become moot on January 14. Mot. at 3, 5, 6. This is a contested question and, importantly, a question  
10 on which the Ninth Circuit has specifically requested briefing, which was completed on November  
11 16. The Ninth Circuit Order is attached as Exhibit A, and the Little Sisters’ supplemental brief is  
12 attached to this filing as Exhibit B. Given that the Ninth Circuit panel is equally aware of the newest  
13 “final” rules that take effect on January 14, and that the panel has specifically requested briefing on  
14 the question of mootness, it would be premature for this Court to start the case up again without  
15 knowing the Ninth Circuit’s answer on mootness.

16 Moreover, even apart from the mootness question, the Ninth Circuit panel is currently  
17 considering other questions that go to the heart of the States’ claims. First, the Ninth Circuit has had  
18 briefing and oral argument on the question of whether the States have standing, and thus whether  
19 this Court has Article III jurisdiction. Second, the States argued their *substantive* objections to the  
20 rule, not merely their procedural objections, to the Ninth Circuit. Those claims are the same claims  
21 the States apparently intend to simultaneously argue in this Court.

22 For these reasons, the Little Sisters believe the better course is to leave the stay in place so that  
23 the Ninth Circuit can decide the mootness question upon which it has requested briefing, and the  
24

standing and substantive questions about the rules' validity which are fully briefed and before that court.

### CONCLUSION

For the foregoing reasons, the States' motion should be denied.

Dated: December 5, 2018

Respectfully submitted,

/s/ Mark L. Rienzi

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